

January 17, 1955

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Miss Ruth Morgan  
Department of Labor  
State of New Hampshire  
15 Pleasant Street  
Concord, New Hampshire

Re: Herbert F. Gray

Dear Miss Morgan:

This is in response to your letter of December 20th in which you asked whether the above-named state employee injured in 1936 is entitled to benefits under the Workmen's Compensation Act. It is our understanding that a recurrence of the injury necessitates hospitalization and a possible operation.

It is the opinion of this office that the employee in question is not entitled to benefits under the Workmen's Compensation Act.

The rights of this individual and the authority of Governor and Council are governed by the legislation in effect at the time of the injury. The provision authorizing the awarding of compensation to state employees at that time is found in Laws of 1929, chapter 140 as amended by Laws of 1933, chapter 44 as follows:

"Compensation Authorized. The governor and council, upon petition and hearing, may award compensation for damages to employees of the state receiving personal injuries by accident arising out of and in the course of their employment, to an amount not exceeding that provided for payment of injuries under chapter 178 of the Public Laws and any amendments thereto, entitled "Employers' Liability and Workmen's Compensation."

It is noted that this provision imposes a limit upon the amount which may be awarded by governor and council, viz: to an amount not exceeding that provided for payment of injuries under the Workmen's Compensation Act.

Under the provisions of the workmen's compensation laws in effect at the time of the injury the period during which compensation benefits were payable was limited to three hundred weeks from the date of the accident. (P. L. chapter 178, section 24). (See: Thompson v. Co., 86 N. H. 436, 448-9. Ben v/ Chicopee Manufacturing Co., 94 N. H. 478, 482.) An employer was required

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furnish remedial care to an injured employee during the first thirty days following an injury. (P.L. chapter 178, section 13 as amended by Laws of 1923, chapter 40). In view of these provisions it would appear that the governor and council at this time, more than three hundred weeks after the accident, do not have the authority to award compensation or furnish remedial care to the employee in question.

However, we would like to point out that several arguments exist which would support the authority of the governor and council to furnish remedial care to this individual and it might be that the Supreme Court would reach a different conclusion than we have. You should, therefore, bear in mind that the governor and council have authority to request an advisory opinion from the Supreme Court on this question since if presented to them an important question of law would be pending before them.

Very truly yours,

Louis C. Wyman  
Attorney General

LCW/C